

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PERIENNE DE JARAY,

Plaintiff,

v.

ATTORNEY GENERAL OF CANADA
FOR HER MAJESTY THE QUEEN,
CANADIAN BORDER SERVICES
AGENCY, GLOBAL AFFAIRS CANADA
fka DEPARTMENT OF FOREIGN
AFFAIRS AND INTERNATIONAL
TRADE CANADA, GEORGE WEBB,
KEVIN VARGA, and PATRICK LISKA,

Defendants.

No.: 2:16-cv-00571

PLAINTIFF'S MOTION FOR FRCP 16
STATUS CONFERENCE AND
PERMISSION TO ENGAGE IN
DISCOVERY UNDER FRCP 26(f)

NOTE ON MOTION CALENDAR:
Friday, August 19, 2016

I. MOTION

Plaintiff Perienne de Jaray requests the Court (1) issue an order under FRCP 26(f) permitting Plaintiff to engage in discovery, despite the Defendants unwillingness to timely confer and (2) schedule a status conference under FRCP 16 to set preliminary deadlines to manage this case.

II. STATEMENT OF FACTS

A. Background Facts

Plaintiff filed this lawsuit on April 19, 2016.¹ Plaintiff worked to serve each of the government defendants under 28 U.S.C. § 1608 and each of the individual defendants under FRCP 4(f) by complying with an international treaty, the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.²

Defendant Webb was the first defendant served on May 25, 2016.³ Defendant Global Affairs Canada fka Department of Foreign Affairs and International Trade Canada (“DFAIT”) was the second defendant served on May 31.⁴ After DFAIT was served, all six defendants filed a notice of appearance on July 1.⁵

The four remaining defendants agreed to accept service through their counsel of record, and the parties entered into a stipulation to complete service.⁶ Plaintiff also agreed to extend the time to respond for all Defendants, and the parties stipulated that all Defendants would answer the complaint or file motions under FRCP 12 by September 29, with motions noted for consideration on October 21.⁷ The Court accepted the parties’ stipulation by

¹ Complaint [Dkt. No. 1].

² Stipulation [Dkt. No. 14].

³ Proof of Service [Dkt. No. 10].

⁴ Proof of Service [Dkt. No. 9].

⁵ Notice of Appearance [Dkt. No. 11].

⁶ Stipulation [Dkt. No. 14].

⁷ *Id.*

1 order dated August 5.⁸

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3 **B. Plaintiff's Attempts to Confer**

4 Once service was complete, Plaintiff attempted to confer under FRCP
5 26(f) so that the parties could begin the process of discovery.⁹ Plaintiff
6 calculated the dates for the parties' FRCP 26(f) conferral and joint status report
7 under FRCP 26(f) and FRCP 16(b).

8 On Friday, July 29, Plaintiff attempted to schedule the parties' FRCP
9 26(f) conferral.¹⁰ Defendants argued that the deadlines in the Federal Rules do
10 not apply in absence of an order from the Court.¹¹ Defendants refused to
11 confer absent a Court order.¹²

12 Defendants have also argued that Plaintiff is not entitled to discovery at
13 all or, if she is entitled to discovery, it would be limited to that discovery
14 necessary to respond to Defendants' Rule 12 motions to dismiss.¹³ Plaintiff
15 attempted to work out reasonable limits on initial discovery, but Defendants
16 have refused to disclose the bases for their motions to dismiss.¹⁴

17 Defendants' refusal to confer under FRCP 26(f) or allow any discovery

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19 ⁸ Order on Stipulation [Dkt. No. 14].

20 ⁹ Email thread between Janis Puracal and David West, dated July 29, 2016
21 (Exhibit 1 to the Declaration of Janis C. Puracal in Support of Plaintiff's Motion
for FRCP 16 Status Conference and Discovery ("Puracal Decl.")).

22 ¹⁰ *Id.*

23 ¹¹ *Id.*

24 ¹² *Id.*

25 ¹³ *Id.*

26 ¹⁴ *Id.*

has left Plaintiff in an untenable position. Plaintiff is unable to take any discovery of the Defendants; unable to take any third party discovery; and unable to propose narrowly tailored discovery necessary to respond to Defendants' motions without any information about the bases for those motions.

Plaintiff requests the Court intervene to allow Plaintiff to take discovery.

III. STATEMENT OF THE ISSUE

Should the Court permit Plaintiff to engage in discovery and schedule a status conference to manage preliminary deadlines in this case?

IV. AUTHORITY

A. The Court should permit Plaintiff to engage in discovery.

The Federal Rules require the parties to work cooperatively to plan for discovery, and the rules prohibit discovery from any source before the parties have conferred under FRCP 26(f), absent a court order.¹⁵ A FRCP 26(f) conferral must occur "as soon as practicable," or at least 21 days before a scheduling order is due under FRCP 16(b). That scheduling order, in this case, is due on August 23.¹⁶ The parties were, therefore, required to confer by August 2.¹⁷ Although some courts prefer to set an individual schedule for the joint status report, that individual preference should not change the date for conferral under FRCP 26(f) to permit discovery.

¹⁵ FRCP 26(d)(1).

¹⁶ Plaintiff calculated the date of the scheduling order based on service on May 25 of Defendant Webb, the first defendant served in this case.

¹⁷ FRCP 26(f)(1).

1 The Defendants, however, have refused to confer and argued that the
2 deadlines in the Federal Rules do not apply absent an order from the Court.
3 The Defendants' refusal to confer is preventing Plaintiff from engaging in any
4 discovery from any source. Plaintiff requests the Court issue an order under
5 FRCP 26(f) permitting Plaintiff to engage in discovery.

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7 **B. The Court should require the Defendants to disclose the bases for**
8 **their motions to dismiss, if the Defendants insist upon limited**
9 **discovery in advance of those motions.**

10 Defendants have argued that Plaintiff is not entitled to discovery in
11 advance of the Defendants' motions to dismiss under FRCP 12. Defendants
12 have refused to disclose the bases for those motions, but have, nonetheless,
13 argued that Plaintiff's discovery, if any, should be narrowly limited to
14 information necessary to respond to those motions.

15 Plaintiff is willing to take discovery in stages, beginning with discovery
16 necessary to respond to Defendants' Rule 12 motions. But Plaintiff cannot
17 reasonably be expected to arbitrarily guess at the bases for those motions in
18 order to narrowly tailor her discovery requests. If the Court intends to limit
19 initial discovery, Plaintiff requests the Court order Defendants to disclose the
20 bases for their Rule 12 motions. If Defendants are unwilling to make that
21 disclosure, Plaintiff requests the Court decline to limit Plaintiff's right to
22 discovery.

23 **C. The Court should schedule a status conference to set preliminary**
24 **deadlines to manage this case.**

25 Plaintiff understands from the Court's Judicial Assistants that the Court
26 will issue a scheduling order for the joint status report after the Defendants'

1 answers are filed. Because Defendants intend to file motions to dismiss in
2 advance of answers, Plaintiff requests the Court schedule a status conference
3 to set some preliminary deadlines to manage this case. Plaintiff requests the
4 Court set that status conference during the month of August to ensure that
5 Plaintiff has sufficient opportunity to take discovery in advance of Defendants'
6 Rule 12 motions, to which Plaintiff must respond by October 17.

7 8 **V. CONCLUSION**

9 Based upon the foregoing, Plaintiff requests the Court (1) issue an order
10 under FRCP 26(f) permitting Plaintiff to engage in discovery and (2) schedule a
11 status conference to set preliminary deadlines to manage this case.

12 DATED: August 11, 2016

13 MALONEY LAUERSDORF REINER, PC

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